

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LERVOLTIS LUCKETT,

Plaintiff,

v.

Case No. 09-C-1031

PETER HUIBREGTES, GARY BOUGHTON,
NURSE MORA, MANAGER MARY, NURSE AMY,
WILLIAM POLLARD, DR. COX, DR. HEIDORN,
and DENNIE PETERSEN,

Defendants.

ORDER

The plaintiff, who is a Wisconsin state inmate proceeding pro se, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. On November 6, 2009, the court directed the plaintiff to pay the sum of \$3.01 as an initial partial filing fee on or before December 4, 2009. The plaintiff has written three letters to the court stating that he does not have enough money in his prison account to pay the initial partial filing fee, and requesting that the court order a lower amount.

While 28 U.S.C. § 1915(b)(4) states that a prisoner may not be prohibited from bringing a lawsuit if “the prisoner has no assets and no means by which to pay the initial partial filing fee,” in all other cases, the prisoner’s initial partial filing fee is calculated according to the statutory formula provided in § 1915(b)(1). The plaintiff’s trust account statements indicate that he receives prison wages, with various amounts withheld for legal loans, victim witness and DNA surcharges, and court filing fees. Thus, it appears that the plaintiff has “means” to pay the initial partial filing fee. See Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997) (“A prisoner with periodic income has ‘means’ even when he lacks

'assets.'"), overruled on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000) and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000).

A review of the plaintiff's six-month trust account statements on file indicates that the correct initial partial filing fee is \$2.93, rather than \$3.01. The plaintiff has submitted a recent trust account statement, showing a balance of \$2.59 in his account on November 20, 2009 – only \$0.34 short of the required \$2.93 initial partial filing fee. (Plaintiff's letter received on November 24, 2009, at 2 [Docket # 5]). Accordingly, the plaintiff will be granted an extension of time to February 1, 2010, to accumulate the necessary funds and to pay his initial partial filing fee. However, if the plaintiff fails to pay the \$2.93 initial partial filing fee by February 1, 2010, his case may be dismissed.

NOW, THEREFORE, IT IS HEREBY ORDERED that on or before February 1, 2010, the plaintiff shall forward to the clerk of court the sum of \$2.93 as an initial partial filing fee in this action.

IT IS FURTHER ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin this 8th day of December, 2009.

BY THE COURT:

s/ Patricia J. Gorence
PATRICIA J. GORENCE
United States Magistrate Judge